

EXHIBIT P

CAUSE NO. D-1-GV-07-001259

- - - -

THE STATE OF TEXAS) IN THE DISTRICT COURT
OF

ex rel.)

VEN-A-CARE OF THE)
FLORIDA KEYS, INC.)

Plaintiffs,)

) TRAVIS COUNTY, TEXAS

vs.)

SANDOZ, INC. f/k/a GENEVA)
PHARMACEUTICALS, INC., EON)
LABS,)

MYLAN PHARMACEUTICALS, INC.,)
MYLAN LABORATORIES, INC.,)
UDL LABORATORIES, INC.,)

TEVA PHARMACEUTICALS USA,)
INC. f/k/a LEMMON)
PHARMACEUTICALS, INC., COPLEY)
PHARMACEUTICALS, INC. IVAX)
PHARMACEUTICALS, INC., SICOR)
PHARMACEUTICALS, INC., and)
TEVA NOVOPHARM, INC.,)

) 201st JUDICIAL
Defendants.) DISTRICT

- - - -

VIDEOTAPE DEPOSITION OF: DAVID L. WORKMAN

- - - -

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DATE: October 15, 2008
Wednesday, 9:00 a.m.

LOCATION: Springhill Suites
1910 Hunters Way
Morgantown, West Virginia

TAKEN BY: State of Texas

REPORTED BY: JoAnn M. Brown, RMR, CRR
Notary Public
Reference No. JB09091

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APPEARANCES (CONTINUED):
FOR THE STATE OF CALIFORNIA:

Eliseo Sisneros, Esq.
consuelo.gutierrez@doj.ca.gov
DEPUTY ATTORNEY GENERAL STATE OF CALIFORNIA
110 West "A" Street, Suite 1100
San Diego, California 92108
P 619-688-6043

FOR THE STATES OF ALABAMA AND MISSISSIPPI:

H. Clay Barnett, III, Esq.
clay.barnett@beasleyallen.com
BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
272 Commerce Street
Post Office Box 4160
Montgomery, Alabama 36103
P 334-269-2343
F 334-954-7555

FOR THE DEFENDANTS MYLAN PHARMACEUTICALS, INC.,
MYLAN LABORATORIES, INC., UDL LABORATORIES,
INC.:

William A. Escobar, Esq.
wescobar@kelleydrye.com
KELLEY DRYE & WARREN, LLP
101 Park Avenue
New York, New York 10178
P 212-808-7771
F 212-808-7897
-and-
Erik C. Nath, Esq.
erik.nath@mylan.com
MYLAN, INC.
1500 Corporate Drive
Canonsburg, PA 15317
P 724-514-1846
F 724-514-1871

ALSO PRESENT:

John M. Lockwood, M.D., Ven-A-Care of the Florida
Keys
Joseph Hagan, Videographer

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VIDEOTAPE DEPOSITION OF DAVID L. WORKMAN,
a witness, called by the State of Texas for
examination, in accordance with the Texas Rules of
Civil Procedure, taken by and before JoAnn M. Brown,
RMR, CRR, a Court Reporter and Notary Public in and
for the Commonwealth of Pennsylvania, at the
Springhill Suites, 1910 Hunters Way, Morgantown,
West Virginia, on Wednesday, October 15, 2008,
commencing at 8:56 a.m.

APPEARANCES:

FOR THE STATE OF TEXAS:

Archie Carl Pierce, Esq.
cpierce@w-g.com
Christopher A. Shuley, Esq.
cshuley@w-g.com
WRIGHT & GREENHILL, P.C.
221 West 6th Street, Suite 1800
Austin, Texas 78701
P 512-476-4600
F 512-476-5382

FOR VEN-A-CARE OF THE FLORIDA KEYS, INC.:

Adam D. Miller, Esq.
amiller@elllaw.com
ENGSTROM, LIPSCOMB & LACK, P.C.
10100 Santa Monica Boulevard, 12th Floor
Los Angeles, California 90067
P 310-552-3800
F 310-552-9434
-and-
Glenn W. MacTaggart, Esq.
gmactaggart@phmy.com
PRICHARD HAWKINS MCFARLAND & YOUNG
Union Square, Suite 600
10101 Reunion Place
San Antonio, Texas 78216
P 210-477-7419
F 210-477-7469

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2 (Pages 2 to 5)

<p style="text-align: right;">Page 102</p> <p>1 get into in light of some previous responses</p> <p>2 you gave me.</p> <p>3 A. Yes. Could I expand on my last answer?</p> <p>4 Q. Certainly.</p> <p>5 A. I don't remember if I was in a decision-making</p> <p>6 process. I don't know if I was involved in a</p> <p>7 policy decision. I don't remember that. I</p> <p>8 believe we would get clarity under the</p> <p>9 interpretation.</p> <p>10 It has been Mylan's policy,</p> <p>11 throughout time, to be in compliance, and from</p> <p>12 our founder's own belief of doing things right</p> <p>13 or not at all, I believe our interpretation or</p> <p>14 how we submitted forms, meaning Mylan as a</p> <p>15 company or Steve on behalf of Mylan, was done</p> <p>16 appropriately, and I know of no reason why we</p> <p>17 would establish a policy not to do so.</p> <p>18 Q. But as I understood your previous testimony,</p> <p>19 you're not part of any process that attempted</p> <p>20 to interpret these forms?</p> <p>21 MR. ESCOBAR: Objection to the form.</p> <p>22 A. I was not.</p> <p>23 Q. Okay. Thank you, Mr. Workman.</p> <p>24 Are you ready to proceed to the</p> <p>25 general discussion of WAC and educate me a</p>	<p style="text-align: right;">Page 104</p> <p>1 invoice, that makes it an average of wholesale</p> <p>2 cost?</p> <p>3 MR. ESCOBAR: Objection to the form.</p> <p>4 A. It is not an average.</p> <p>5 Q. Okay.</p> <p>6 A. It is a price point that is representative of</p> <p>7 the wholesale acquisition cost.</p> <p>8 Q. All right. Is there any negotiation with the</p> <p>9 customer as to what the WAC will be?</p> <p>10 A. No, I don't believe there is.</p> <p>11 Q. Okay. And so when we go through these</p> <p>12 exhibits with negotiations, the bid process,</p> <p>13 the internal documents, there's no document</p> <p>14 that's going to reflect a negotiation with the</p> <p>15 customer as to where you've set the WAC?</p> <p>16 A. No.</p> <p>17 Q. Okay. Because they negotiate a price other</p> <p>18 than WAC with you, correct?</p> <p>19 They don't care what the WAC is as</p> <p>20 far as what they're paying for the product?</p> <p>21 A. Meaning our wholesalers?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, we do negotiate another price with the</p> <p>24 wholesalers. That is for their source program</p> <p>25 and auto-sub program, and let me explain</p>
<p style="text-align: right;">Page 103</p> <p>1 little bit about that, please, sir?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. When Mylan sets a WAC, what is it?</p> <p>4 A. What do you mean by the question "what is it"?</p> <p>5 Q. Does Mylan set its WAC?</p> <p>6 Does Mylan -- when we talk about a</p> <p>7 WAC number, is that a number that Mylan has</p> <p>8 set itself for its products?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what is it after they've set it?</p> <p>11 A. Are you asking me the price or are you asking</p> <p>12 me what it represents?</p> <p>13 Q. What it represents is probably a better way to</p> <p>14 ask the question.</p> <p>15 What does it represent?</p> <p>16 A. It is our invoice pricing to our wholesalers.</p> <p>17 It is representative of the wholesale</p> <p>18 acquisition cost.</p> <p>19 Q. And how is it representative of the wholesale</p> <p>20 acquisition cost other than it is on the</p> <p>21 invoice?</p> <p>22 A. It is what we invoice wholesalers when they</p> <p>23 purchase our product. They are responsible</p> <p>24 for the payment of that invoice.</p> <p>25 Q. And what is it, other than being put on the</p>	<p style="text-align: right;">Page 105</p> <p>1 something else, that our sales to wholesalers</p> <p>2 have evolved over time, and it has changed</p> <p>3 significantly, and there's many processes and</p> <p>4 different transactions that are involved now,</p> <p>5 and what I'm referring to in this testimony is</p> <p>6 that mechanism today. However, historically,</p> <p>7 we invoiced wholesalers at WAC, and that was</p> <p>8 their price for all of the product that they</p> <p>9 purchased from us. All right? There was a</p> <p>10 full-line wholesale agreement in which we</p> <p>11 would provide a discount, and that could be a</p> <p>12 percentage off that. That was their net price</p> <p>13 points.</p> <p>14 There was an initiative by a</p> <p>15 wholesaler that occurred where they had</p> <p>16 warehouses full of multiple manufacturers for</p> <p>17 the same product, and they wanted to eliminate</p> <p>18 multiple manufacturers for the same product in</p> <p>19 their warehouse, and I believe the customer</p> <p>20 was Bergen Brunswig, and they created an auto-</p> <p>21 sub/source program where they contacted all</p> <p>22 the manufacturers and they said, we are going</p> <p>23 to put our entire stocking portfolio out to</p> <p>24 bid to all the manufacturers, and this is how</p> <p>25 you respond to this bid, and this is what</p>

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1 transactions you need to perform. And it was
2 competitive bid processing, and from what we
3 understood, the most aggressive or the lowest
4 price won their warehouse space, and instead
5 of a pharmacy ordering up Mylan's product,
6 they would just order up the product in
7 general, and whoever's product was stored in
8 inventory in that warehouse space would then
9 be shipped to their customers. So, that was
10 the evolution of the source program.

11 Today, we invoice wholesalers at
12 WAC. They're responsible for that invoice.
13 They sell to pharmacies under a source
14 program. They sell to pharmacies that are
15 members under our third-party contracts. They
16 also sell to pharmacies that are on neither a
17 third-party contract or their source program.

18 When they do sell a product out
19 under their source program or under a third-
20 party contract, at a designated negotiated
21 contract price, a chargeback is processed, and
22 a chargeback is the difference between WAC and
23 that contract price. If they sell it to a
24 pharmacy that is not a part of a third-party
25 contract or not a part of their source

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1 program, we would not receive a chargeback for
2 that, so they would be responsible for that
3 invoice.

4 Again, WAC is the invoice price to
5 the wholesaler. We have prompt payment terms
6 to those wholesalers. Generally, it's a 2
7 percent discount if it's paid within a certain
8 time period. So, there is an evolution over
9 time of -- WAC is a real price, and
10 wholesalers, their net prices were based upon
11 that WAC price, but, over time, it evolved
12 where they established their own contract and
13 their own contract price, and that was for
14 their source program, not their entire book of
15 business.

16 Q. I appreciate that very much.

17 Let me follow up with this for my
18 clarification -- your answer was excellent,
19 but that doesn't mean I can understand every
20 aspect of it. But you said wholesalers are
21 responsible for that invoice, and you used the
22 term "responsible", and I want to try to see
23 if there's a way to determine how often that
24 invoice WAC price is paid in full, and,
25 therefore, does it represent a true

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1 acquisition cost?

2 Do you know how often, percent-wise
3 or however you want to define it, that, in
4 fact, Mylan customers pay the full WAC invoice
5 without any reduction from any source?

6 MR. ESCOBAR: Objection to the form.

7 A. We have some products in our line right now
8 that the only price point that we charge is
9 WAC. So, those do exist, yes, and let me
10 explain this.

11 Q. Can I ask you to identify those products?

12 MR. ESCOBAR: Let him --

13 A. You could.

14 MR. ESCOBAR: Let him answer the
15 question.

16 Q. Okay. Help me remember to ask you for those
17 products. Go ahead and give me your
18 explanation.

19 A. Now, when an order comes in from a wholesaler,
20 it is not for one bottle and it's not for one
21 product, it is a multiple-line order, and what
22 we ship to them has multiple lines on that as
23 well. Okay? So, that invoice is created for
24 the products that were shipped under that
25 order. Like I said, not for one bottle, not

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1 for one invoice price. There are many
2 transactions that occur, meaning sales to
3 third-party contracts, sales to -- under their
4 own source program, we receive returned
5 merchandise from them, we receive chargebacks
6 from them, and it is not a transaction or an
7 invoice that is paid in a vacuum. There are
8 many moving parts to that invoice, including
9 the 2 percent prompt payment.

10 So, are they responsible for that in
11 full? Yes, but that invoice is reconciled
12 under other transactions through our accounts
13 receivable department, and this is not a
14 one-time purchase. This is a continual
15 process between the manufacturer and the
16 wholesaler.

17 Q. And it's done primarily electronically?

18 A. We do invoice electronically. We do
19 chargebacks and chargeback reconciliations
20 electronically. They submit orders to us
21 electronically as well.

22 Q. And for your big customers, your big
23 wholesalers, your big chains, your big GPOs,
24 do you all, in fact, have some sort of
25 computer interface to accomplish that?

28 (Pages 106 to 109)

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1 Q. And they pay that WAC without any reduction,
 2 other than the 2 percent prompt pay, because
 3 there's no circumstances for them to reduce
 4 it?
 5 A. Yes.
 6 Q. And is this something separate and apart from
 7 the situations you've already told me about?
 8 These customers?
 9 A. Well, another piece of that is where they
 10 purchase our product and maybe they do service
 11 a third-party contract and maybe they do have
 12 a source program, however, that product is not
 13 on a third-party contract that they would
 14 service or it is not under their source
 15 program.
 16 Q. And does it still fall in the category of what
 17 you told me about previously? It happens, but
 18 it's a small amount of the business, and it
 19 happens rarely?
 20 A. I don't know the frequency, but I'm talking
 21 about other products that we may have contract
 22 prices with and not just a subset of the
 23 products that I just described.
 24 If a wholesaler orders a product and
 25 warehouses a product or for a particular

1 correct?
 2 A. Yes.
 3 Q. -- do you routinely and usually send out an
 4 AWP and a WAC to those customers who are
 5 involved in the bidding process?
 6 A. We do send out an AWP with our offers. To the
 7 wholesalers, we send out our WAC.
 8 Q. When -- those price point references that
 9 we've talked about, A, B, C or A, B, C and D?
 10 A. Yes.
 11 Q. And when those bidding processes end up in a
 12 contract --
 13 A. Yes.
 14 Q. -- and the price is going down for a
 15 particular product -- we saw some examples in
 16 the exhibits we talked about, correct?
 17 A. Yes.
 18 Q. -- and if the price goes down and that range
 19 of prices goes down for a class of trade, does
 20 the WAC go down with it?
 21 A. At times.
 22 Q. And give us the circumstances when the WAC
 23 would go down with it?
 24 A. This is a highly-competitive industry where
 25 our products are commoditized quickly after

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1 customer who is requesting our product,
 2 however, that product is not under a third-
 3 party contract that they service or even under
 4 their source program, that is another
 5 illustration of how a wholesaler could order
 6 and be responsible for the full WAC, because
 7 we would not be receiving a chargeback either
 8 for a third party or for their source program.
 9 Q. And how often does that happen?
 10 A. I don't know the frequency, but it does
 11 happen, and it's for other products other than
 12 the subset of products that I described.
 13 Q. And can you give us any -- is it less than 1
 14 percent of the business, 2 percent, whatever
 15 number you're comfortable with telling me?
 16 A. I don't know. I do know it happens. I don't
 17 know if it happens frequently, infrequently or
 18 on a case-by-case basis. I imagine it's a
 19 case-by-case basis, and once it occurs, then
 20 either a group or the wholesaler itself would
 21 call us and want to negotiate contract
 22 prices. However, it does occur.
 23 Q. Okay. When you're involved in the bidding
 24 process -- which is part of pricing and
 25 contracts' duties and responsibilities,

1 launch or at launch, depending upon the timing
 2 of our approval. We establish our AWP. We
 3 establish our WAC. They are independent of
 4 each other. Our AWP is less than the brand.
 5 Our WAC is less than the AWP. For any
 6 particular product, for any particular
 7 customer, for any particular circumstance,
 8 prices may be different. Our WAC is our
 9 wholesale acquisition cost, the price that we
 10 invoice to our wholesalers. We negotiate and
 11 bid contract prices. Over time, those
 12 contract prices may erode. Over time --
 13 Q. Go down?
 14 A. Yes, go down, and, at times, we have increased
 15 contract prices, but we assess our contract
 16 prices with our costs, and we try to manage
 17 our business.
 18 Now, with this WAC and with a third-
 19 party contract that purchases the product
 20 primarily through the wholesaler, there is
 21 that 2 percent prompt pay liability and also
 22 the difference between WAC and their contract
 23 price that we try to management. Now, every
 24 product and every situation and every
 25 competitive bid is different, but we try to

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1 A. That's an acronym. I'm not entirely sure what
 2 the HCFA acronym stands for. I think it's
 3 actually what CMS is now.
 4 Q. So, it's a governmental agency of some type?
 5 A. Yes.
 6 Q. So, HCFA FUL -- F-U-L, in caps -- List. This
 7 is the subject matter.
 8 I see, towards the bottom, that you
 9 are part of the e-mail string, and do you
 10 remember this particular e-mail?
 11 A. No.
 12 Q. Do you remember getting an e-mail like it?
 13 A. No.
 14 Q. Would you get e-mails relating to FUL on any
 15 kind of regular basis?
 16 A. No.
 17 Q. Do you know whether or not you've ever gotten
 18 an -- strike that.
 19 Have you ever received a FUL list
 20 other than in this e-mail?
 21 A. I don't know.
 22 Q. You can't remember any other time -- well,
 23 actually, as you sit here today, you can't
 24 remember any time that you received one,
 25 correct?

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1 A. I don't recall this e-mail. I don't recall
 2 receiving similar e-mails. As stated in your
 3 prior question, I may have. I may have looked
 4 at these.
 5 The majority of my time today is
 6 looking at our prices to our customers and
 7 responding to our customer inquiries. This is
 8 not a project, an assignment, an analysis that
 9 is a regular work of myself or anyone in our
 10 department.
 11 MR. MILLER: I think we have to
 12 change the tape, so why don't we just take a
 13 five-minute break.
 14 THE VIDEOGRAPHER: We're going off
 15 the record. The time indicated is 2:01 p.m.
 16 Stand by. This is the end of disk two.
 17 ----
 18 (There was a recess in the proceedings.)
 19 ----
 20 THE VIDEOGRAPHER: We're back on the
 21 record. The time indicated on the screen is
 22 2:18 p.m. This is beginning of disk three.
 23 You may proceed.
 24 BY MR. MILLER:
 25 Q. I think, just before we went off the record,

1 we were talking about FUL, and you stated it's
 2 a federal upper limit.
 3 What is that, if you know?
 4 A. I believe it's a limit on which CMS has
 5 decided to reimburse pharmacies at.
 6 Q. And do you know who sets the FUL?
 7 A. I believe CMS.
 8 Q. And do you know when the FUL -- under what
 9 circumstances a FUL is set?
 10 A. No.
 11 Q. And do you know what are the consequences, if
 12 any, if one of your generic products were to
 13 no longer be governed by a FUL?
 14 MR. ESCOBAR: Objection to the form.
 15 A. Could you repeat the question, please?
 16 Q. Yes.
 17 If one of Mylan's generic products
 18 which had been subject to a FUL had -- was
 19 then no longer subject to a FUL, all right,
 20 what are the consequences of that for Mylan
 21 and its pricing, if any?
 22 MR. ESCOBAR: Objection to the form.
 23 A. I don't believe that it would be a consequence
 24 to Mylan.
 25 Q. Would that be an opportunity at that time, if

1 the FUL is lifted on a particular product, for
 2 you to then raise your AWP?
 3 A. I believe that it would allow the pharmacy to
 4 charge more. I believe that Mylan could raise
 5 its price. However, I don't believe that that
 6 ability to do so is solely dependent upon
 7 whether an FUL exists or not.
 8 Q. Well, would it be accurate, if you know,
 9 whether a FUL is always or almost always lower
 10 than AWP?
 11 A. I don't know.
 12 Q. Is that your answer?
 13 A. Yes.
 14 Q. Well, you don't know the interplay between FUL
 15 and AWP? Would that be an accurate statement?
 16 MR. ESCOBAR: Objection to the form.
 17 A. Yes, I don't know.
 18 Q. Do you even know what FULs are used for by
 19 Mylan?
 20 MR. ESCOBAR: Objection to the form.
 21 A. I don't believe we use FULs.
 22 Q. So, it would be of little concern to Mylan and
 23 the sales teams at Mylan whether or not there
 24 was a federal upper limit on any particular
 25 Mylan product?